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SENTENCE

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 616 VB

5 JOHANNES THALER,

6 Defendant.

7 -----x
8 March 4, 2015
9 10:05 a.m.
White Plains, N.Y.

10 Before:

11 HON. VINCENT L. BRICCETTI,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
Southern District of New York

16 BENJAMIN ALLEE

17 EMILY RAE WOODS

Assistant United States Attorneys

18 FEDERAL DEFENDERS UNIT

19 Attorney for Defendant

JASON SER

20 KERWIN JOHN, DOJ

21 Also Present: SAJEEB WAZED JOY

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1 THE COURTROOM DEPUTY: United States v. Johannes
2 Thaler. Will counsel please note their appearances.

3 MR. ALLEE: Benjamin Allee and Emily Rae Woods for the
4 government. With us is Special Agent Kerwin John.

5 MR. SER: Federal Defenders by Jason Ser for
6 Mr. Thaler. With me is paralegal Dana Krausher from our
7 office.

8 THE COURT: Okay, good morning. Have a seat. This
9 matter is on for sentencing today, the defendant having pleaded
10 guilty to aiding and abetting the bribery of a public official,
11 namely FBI Special Agent Robert Lustyik, and also pleaded
12 guilty to conspiracy to committing wire fraud and honest
13 services fraud.

14 I've reviewed the following materials in preparation
15 for sentencing. Presentence report dated January 8, 2015,
16 prepared by Probation Officer Sarah Willette. Plea agreement
17 dated October 15, 2014. Defense counsel sentencing memorandum
18 dated February 25, 2015, as well as a number of letter and
19 other materials attached thereto including a letter from the
20 defendant. And also I reviewed the government's sentencing
21 memo dated March 2, 2015 as well as the government's letter of
22 March 3, 2015. I will consider the government's sentencing
23 memo notwithstanding it was submitted untimely. I'm was very
24 clear at the time of the guilty plea that any sentencing
25 submission by the government had to be submitted at least three

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1 days in advance of sentencing for the simple reason that I need
2 to read these things, and it's particularly relevant in a case
3 like this where the government's sentencing memo is 19 pages
4 long and they had several months to prepare it and plenty of
5 time to prepare it after the defendant's memorandum was
6 submitted in a timely fashion. In any event, I have reviewed
7 it and will consider it. In addition I received a letter from
8 the government on March 3rd essentially withdrawing one of the
9 requests made in the sentencing memorandum. So I've reviewed
10 that as well. Has anything else been submitted that I failed
11 to mention?

12 MR. ALLEE: No, your Honor.

13 MR. SER: No, your Honor.

14 THE COURT: Mr. Ser, have you read the presentence
15 report and discussed it with your client?

16 MR. SER: I have, your Honor.

17 THE COURT: Mr. Thaler, have you read the presentence
18 report?

19 THE DEFENDANT: Yes, I have, your Honor.

20 THE COURT: Have discussed it with your attorney?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Mr. Allee, have you read the presentence
23 report?

24 MR. ALLEE: Yes, your Honor.

25 THE COURT: Let me just state the guidelines

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1 calculation as set forth in the presentence report. There are
2 some issues that we need to address. Let me just put on the
3 record what the PSR says regarding the guideline ranges. First
4 of all, the base offense level is 12 under 2C1.1(a)(2). Again
5 I'm not making a finding just yet. Two-level upward adjustment
6 because the offense involved more than one bribe, that's
7 guideline section 2C1.1(b)(1). Ten-level upward adjustment
8 because the value of the payments to be obtained by the public
9 official was in excess of \$120,000. That's 2C1.1(b)(2), and a
10 cross-reference to 2B1.1(b)(1)(F). A four-level upward
11 adjustment because the offense involved a public official at a
12 high level or sensitive position. 2C1.1(b)(3). A three-level
13 upward adjustment because the victim, who is identified as
14 Individual Number 1, was a member of the immediate family of a
15 government officer or employee and the offense was motivated by
16 such status. That's 3A1.2(a)(1)(C) and 3A1.2(a)(2). There's a
17 two-level downward adjustment because the defendant was deemed
18 to be a minor participant and a three-level downward adjustment
19 for acceptance of responsibility such that the final offense
20 level is 26 at Criminal History Category I based on one
21 criminal history point. And therefore according to the
22 presentence report the sentencing ranges is 63 to 78 months
23 imprisonment, the supervised release range is one to three
24 years, and the fine range is \$12,500 to \$125,000.

25 Does the government have any objection to any of the

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1 factual statements in the presentence report?

2 MR. ALLEE: No, your Honor.

3 THE COURT: Does the defendant have any objection to
4 any of the factual statements in the presentence report?

5 MR. SER: No, your Honor.

6 THE COURT: And I know that you have, we have a
7 dispute about the three-level official victim which we'll
8 address. You're not waiving that by saying that. To the
9 extent there are any facts that are set forth in the report
10 relating to that adjustment, the three-level adjustment, I'm
11 assuming that you have an objection to that. But putting that
12 aside, there are no other disputes as to the facts so the Court
13 adopts the factual statements in the presentence report as the
14 Court's own findings of fact for purposes of this sentencing.

15 Does the government have any other objections to the
16 presentence report or its guidelines calculation?

17 MR. ALLEE: No, your Honor.

18 THE COURT: And I know that the defendant has an
19 objection to the three-level official victim enhancement.
20 Other than that, does the defendant have any objections to the
21 presentence report or its guidelines calculation?

22 MR. SER: No, your Honor.

23 THE COURT: All right. Let's address the issues at
24 this time. First of all, I know that the parties have agreed
25 that the offense involved more than one bribe such that there

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1 is a two-level upward adjustment. I'm just curious, I'm just
2 asking counsel, you've agreed on it so presumably you have a
3 basis for that agreement, but why do you think there was more
4 than one bribe here when in fact there only was one bribe
5 actually paid?

6 MR. ALLEE: Yes, your Honor.

7 THE COURT: And it could be Mr. Ser too, because he's
8 agreed to this, I'm not picking on you, Mr. Allee. I want to
9 know factually what the basis of this is because although you
10 stipulated to it I'm not bound by the stipulation.

11 MR. ALLEE: Of course, your Honor. We have agreed to
12 it and we're in a position to prove that the bribery scheme of
13 which Mr. Thaler is guilty included not only the exchange of
14 the money that actually happened but an agreement regarding an
15 ongoing course of conduct involving the dissemination and
16 disclosure of information that co-defendant Lustyik had access
17 to at the FBI over time on a number of issues all relating to,
18 in one way or another, what you can describe I guess as
19 Bangladeshi politics or politicians, but not limited to one set
20 of disclosures or even one issue, having to do with different
21 people, having to do with different topics for those different
22 people over a span of several months going in one direction.
23 And in the other direction, while there was only one payment
24 actually made, there was an agreement and discussion of several
25 more payments to be made which ultimately became an agreement

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1 for a \$40,000 retainer and \$30,000 a month. Of course, that
2 never happened, we've talked about it before your Honor, that
3 there came to be an impasse or a game of chicken over whether
4 the information would go out first --

5 THE COURT: The phrase "show me the money" comes to
6 mind. One might substitute show me the documents before I give
7 you the money comes to mind. It broke down and they never
8 actually made those payments.

9 MR. ALLEE: Yes. And no one was saying "help me help
10 you" to spin that out. That enhancement applies when there is
11 a series of transactions involving multiple bribes, multiple
12 changes of information. That enhancement, we looked hard at it
13 and I know Mr. Ser looked hard at it, we agree that that
14 enhancement wouldn't apply, there are cases even where there
15 are multiple bribes where that enhancement wouldn't apply if
16 they are installment payments.

17 THE COURT: The guidelines specifically say that.

18 MR. ALLEE: Our position is that that was not the
19 scheme here. That's not what was discussed between the
20 parties. We're prepared to prove this was not installment
21 payments towards one corrupt act or even a series of corrupt
22 acts all bound up in one person. There was an agreement here.
23 There was a scheme of which the defendants have been convicted
24 that included the intent to pay multiple bribes for multiple
25 disclosures of information on a series of issues. Therefore,

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1 the enhancement applies.

2 THE COURT: Mr. Ser, you agree with that, you agree
3 the enhancement applies?

4 MR. SER: We agreed in the plea agreement that the
5 enhancement applies. That's what the plea agreement says, your
6 Honor.

7 THE COURT: I'm going to honor that agreement because
8 I know that counsel in this case on both sides are highly
9 competent. I also know that there's an institutional
10 incentive, meaning the institution being the court, to honor as
11 often as humanly possible plea agreements and particularly
12 stipulations of fact that give rise to guidelines calculations
13 because the last thing in the world the Court wants to do is
14 send a message to the bar that they can work hard to resolve
15 cases by guilty plea which include a stipulated guidelines
16 range only to have that overturned by a judge who almost always
17 is less familiar with the facts and circumstances of the case
18 than counsel is. So I'm not going to -- I'll put it in the
19 affirmative. I'm honoring that agreement. There is a
20 two-level adjustment.

21 However, I did want to ask both of you, because it is
22 an agreement that you both entered into, about the statements
23 in the government's brief at pages 4 and 5, at the bottom of
24 the page. On December 16, 2011 Thaler and Ahmed agreed, that's
25 an important word, agreed to a contract arrangement whereby

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1 Ahmed and his associates would pay Lustyik and Thaler a \$40,000
2 retainer fee and \$30,000 per month in exchange for additional
3 information, etc. Then there's a quote from what I think are
4 text messages, am I right, Mr. Allee?

5 MR. ALLEE: Yes, your Honor.

6 THE COURT: That's not a voice recording, these are
7 text messages.

8 MR. ALLEE: Correct, your Honor.

9 THE COURT: It just doesn't say that explicitly. It
10 says that Mr. Thaler evidently in a text message says why don't
11 we just do the contract, 40 up front, 30 monthly, etc. And
12 Ahmed says that's fine. And I guess at that point the
13 government and the parties at that point agree that an
14 agreement was made with the term "that's fine." But then it
15 goes onto say but they have to have some idea of what you have.
16 They aren't going to sign something, which suggests that it's
17 not fine, not knowingly and give you the money. "I don't need
18 any documents or anything. Just give me some idea what exactly
19 you have on them. The last documents you gave me about three
20 hundred millions dollars, how far that investigation went and
21 what they found. Give me some idea and I will get you that
22 contract!!!!" And then Thaler says: "Okay. I'll let you
23 know." And Ahmed says: "I'm working for you and myself." By
24 the way, I'm interpreting the shorthand way in which people
25 speak in text messages. But it clearly says "I'm working for

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1 you and myself. If this works out I will be the hero to my
2 party!!!!" Mr. Thaler says: "We can make that happen." And
3 Ahmed says: "Get me some info on --" three and six zeros which
4 I guess, well, three followed by six zeros which is three
5 million, and then it's followed by the word "mil file.
6 Thanks."

7 My question is is that the text message which supports
8 the conclusion that an agreement was made to pay additional
9 bribes, and also is that the basis for the next question that I
10 have which is with respect to the ten-level enhancement for the
11 value of the payments to be obtained? Or is there something
12 more?

13 MR. ALLEE: That is part of the basis, your Honor.
14 The texts in our brief continue, your Honor.

15 THE COURT: Yes, they do.

16 MR. ALLEE: On page 5 we quote ensuing texts that
17 follow between Lustyik and Thaler. Lustyik writes: "So, how
18 much is this contract with Caesar" referring to Mr. Ahmed.

19 THE COURT: But that's between two people on one side
20 of the deal, not between both parties to the deal, right? So
21 if I'm entering into a contract with you and it affects
22 somebody else that I'm working with, that other person and I
23 may talk about it but that only reflects conversations that he
24 and I are having. It doesn't necessarily reflect the
25 conversations that you and I are having. Because you and I are

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1 on the opposite ends of this deal. In this case Ahmed is on
2 one side, Lustyik and Thaler are on the other side. Just
3 referring to conversations between Lustyik and Thaler doesn't
4 in and of itself, although it's suggestive but it doesn't in
5 and of itself show some actual agreement that was entered into
6 between Lustyik-Thaler on one side and Ahmed on the other side.
7 So what you're citing to is just Lustyik Thaler.

8 MR. ALLEE: Yes, your Honor. Our position is that
9 that's actually very powerful proof of the agreement itself.
10 That's two of the three participants in the agreement candidly
11 discussing what it is. Perhaps Thaler wasn't giving the
12 straight dope to Lustyik but this is pretty good proof, they're
13 texting the next day, Lustyik says what is it, and Thaler says
14 our original terms, it says 40 retainer and 30 monthly which we
15 interpret to mean 40,000 and 30,000 dollars respectfully and
16 then Thaler describes what is being sought.

17 Again, we agree that that didn't happen, that money
18 didn't come forward. We have proof about efforts to collect
19 that money, some money was collected although not then
20 disbursed through to Thaler and Lustyik. But our position is
21 actually that those texts are powerful proof of the agreement.

22 THE COURT: Let me stop you. I'm going to honor the
23 agreement both in terms of the number of bribes and the amount
24 of the payments to be obtained because again, this is a
25 contract entered into between highly competent, experienced

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1 counsel and I'm not going to upset that. But another way to
2 interpret these texts -- this is not the entire trial, this is
3 just a handful of texts, I get it -- the reason why I'm going
4 to do that is because I don't presume, I really don't presume
5 to know anywhere near as much about this case as you and
6 Mr. Ser and Mr. Thaler do. I just don't. How could I
7 possibly. But another way to interpret this, Thaler, who I'm
8 told is a salesman, that's what he does for a living, is trying
9 to sell both sides on this deal, that he's the middleman and
10 he's trying to tell Ahmed, look, we got some really great
11 stuff, it's highly valuable, so valuable that you ought to pay
12 us tens of thousands of dollars a month over some indefinite
13 time period. And at the same time when Ahmed says well, yeah,
14 okay, but you got to show me the information first before I
15 start paying you the money, it sounds good, but before we make
16 that final deal, let's have some further, I mean show me
17 something first. You showed me a little stuff, but not a lot
18 and I want to see some more because somebody is funding this
19 and until you show me more, I can't really get -- make this
20 happen. So that's the conversation on one end. And then
21 Thaler, being a good salesman, trying to capitalize on his
22 relationship with his other friend, Lustyik, to monetize his
23 friendship with Lustyik says to Lustyik, yeah, we got the deal,
24 original terms, 40 up front, 30 every month thereafter. That's
25 not exactly what the text messages that you quote between Ahmed

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1 and Thaler say. It is not. It just isn't.

2 I understand your point, which is that you got to read
3 all the communications, you got to consider all the evidence,
4 and if the case went to trial, if this were an issue at trial,
5 I'm not sure it exactly would be, but if it were, the
6 government feels it could show that there was actually an
7 arrangement that was actually agreed to for actual payments
8 over a period of time as opposed to here's a couple of
9 documents, confidential and highly sensitive documents which
10 under no conceivable -- which had no conceivable legitimate
11 purpose to be disclosed by a senior FBI agent acting in a
12 counter intelligence capacity, that he would know that, that
13 Thaler would know that, that Ahmed would know that.

14 Don't mistake anything I'm saying as a suggestion that
15 I don't think this is a matter of the utmost seriousness,
16 because it clearly is. It's just that these texts that you're
17 citing, and which you've given to me so presumably you're
18 giving me the best texts you have, you don't have something
19 else that's even better that you didn't tell me about, they are
20 susceptible to more than one meaning. That's all I'm saying.
21 And you say, well, in an adversarial context perhaps that's
22 true, but we believe they mean that they made a deal for this
23 amount of money looking forward and in any event we've entered
24 into a formal agreement to that effect with defense counsel so
25 that's the end of it.

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1 MR. ALLEE: Yes, your Honor. Can I add two more
2 points which relate to what your Honor has said?

3 THE COURT: Sure.

4 MR. ALLEE: The first is there are other ways --
5 you're right, these texts we're submitting, these are primary
6 proof on this point.

7 THE COURT: And they're powerful proof of a blatant,
8 corrupt bribery scheme. So please don't mistake anything I'm
9 saying for anything other than that. I'm just trying to figure
10 out, because the guidelines require me and the Supreme Court
11 requires me to actually calculate the guidelines. And we all
12 say, how many times have you heard a judge say this agreement
13 is not binding on me. It's binding on the parties but not me.
14 Those two things we all agree on. I have to figure it out and
15 the agreement is not binding on me. So I'm just trying to
16 figure out what the guideline range is.

17 MR. ALLEE: Which, of course, you must do regardless
18 of what we agree to. I want to point out something that you
19 have said but I want to say it in a different way. Aside from
20 the texts, just one piece of corroboration for this which is
21 much more a 30,000 foot level. What was happening here is the
22 corruption through bribery of an FBI agent to the point where
23 Lustyik, to the point where he was violating his oath and
24 betraying a lot of sacred things. That's very valuable. So
25 the notion that there would be a payment of 40,000 and then

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1 30,000 a month is corroborated by the fact that it was worth,
2 that that was worth that. This is not a drug case with a kilo
3 and this is a sting by the government and they've inflated the
4 numbers. There's not a mismatch between the value of what's
5 being offered on one side and then the discussion of what's
6 going to be paid on the other. That actually is pretty
7 corroborative. It is worth a lot of money to get an FBI agent
8 of 24 years in counter intelligence to do this.

9 THE COURT: You're right. But the only problem with
10 that is that everything you said is correct but the only
11 suggestion to the contrary is that they didn't actually pay the
12 money. So at the end of the day they apparently decided well,
13 whatever it is that they, meaning Thaler and Lustyik, are
14 telling us or telling me, Ahmed, because he's the only other
15 defendant in the case, whatever Lustyik and Thaler are telling
16 me, even though I thought it might be worth perhaps hundreds of
17 thousands of dollars, I'm not so sure anymore and I'm just not
18 going to do it. Because Ahmed never said, look, this is
19 unbelievably fantastic information worth every penny, it's just
20 that I don't have the money so I'm sorry, I wish I could. And
21 I know I agreed to do this but I'm not going to do it because I
22 don't have the money. He never said that. They just didn't do
23 it. At least the text messages don't say that. Maybe they did
24 say that amongst themselves. But the text messages don't say
25 that.

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MR. ALLEE: Right, your Honor. The other point I want to make, I'm going back to something you said earlier but I want to make more concrete what I said, how this was a series of multiple disclosures on multiple issues, just so that point is not as vague as I left it. We've described that the disclosures included documents about an individual identified as Individual 1 in the indictment. The documents went out. That's actually where the thousand dollars came back. And there's other information disseminated about that individual over time that was not in documents that was described orally or in e-mails. Then there was another aspect of it which was there's another individual, a Bangladeshi individual about whom Lustyik, this is someone allied with Ahmed, Lustyik described that he was willing to, in exchange for payment, for bribe, assist in interfering with the investigation of that individual. That individual is being investigated in an international investigation. Lustyik offered his services in getting information about the investigation and potentially interfering with it. I want to make concrete that there were multiple, that's one reason for that enhancement, there were multiple things going on here. It wasn't just one set of payments for one set of disclosures.

THE COURT: The bottom line is I am honoring the agreement both on the plus two for more than one bribe and the plus ten for the value of the payments to be obtained. This is

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1 helpful because while the guidelines of course are very
2 important, they are at the end of the day advisory, and my job
3 is to figure out the appropriate sentence, not necessarily the
4 one that's recommended by the guidelines. So all of these
5 facts are relevant to that, both the facts that support the
6 general notion that this was a grotesque scheme, which it was,
7 and all the participants knew that, but also the fact that at
8 the end of the day, when the dust was settled and everything
9 was done, a total of a thousand dollars was paid to, sometimes
10 I see it as three, but two documents were exchanged, some other
11 information was provided and then the parties basically faded
12 away or they walked away from each other relatively soon after
13 these text messages. Those facts are all relevant to this
14 case.

15 So I do adopt both the, as I said, the plus two for
16 more than one bribe and the plus ten for the value of the
17 payments to be obtained.

18 Here's another question for you before we get to the
19 one that's really in dispute. Here's another one that -- well,
20 minor participant. The parties have agreed that Mr. Thaler is
21 entitled to a two-level downward adjustment for minor
22 participant under 3B1.2(b). And I'll just quote one sentence
23 from your brief, Mr. Allee. It says: "Thaler was a critical,
24 irreplaceable participant without whom the bribery scheme would
25 have never happened." Let me start over again. This is on

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1 page 17. "Thaler was a critical, irreplaceable participant
2 without whom the bribery scheme would never have happened let
3 alone grown. Thaler alone had the trust of and access to
4 Lustyik to accomplish the crime and to put Lustyik together
5 with those who would and did bribe him."

6 How do you square those statements, which I assume you
7 mean, with agreeing to a minor role adjustment? I'm really
8 struggling with that one. As I say, I'm telling you right now
9 I'm going to honor that agreement for all the reasons I said
10 earlier, institutional and otherwise. Tell me how that squares
11 with the minor role adjustment.

12 MR. ALLEE: Yes, your Honor. We do think that there
13 is a complete harmony between those characterizations. The
14 three participant in the scheme played different roles.
15 Lustyik, we agree, played as significant a role as you can pay.
16 He was the corrupted agent here.

17 THE COURT: You don't have to belabor that point.

18 MR. ALLEE: On the other side, Ahmed is the person who
19 was motivated to get the document, the person who is gathering
20 cash to pay for the documents who was sort of driving that
21 purpose of this disclosure. And Thaler was in between. In
22 that sense, when you compare the roles of these three
23 participants, Thaler is minor in the ordinary sense of the
24 word. And when you read the guidelines he's a minor
25 participant. When you read cases about minor participants his

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1 role is just so comparatively less than his co-defendants.

2 THE COURT: How would Ahmed have ever met Lustyik if
3 it weren't for Thaler?

4 MR. ALLEE: He would not have.

5 THE COURT: So isn't Thaler critical to that
6 relationship?

7 MR. ALLEE: Maybe this is a language point. Our view
8 is you can be a minor participant and critical, that's what
9 happened here. Probation seemed to take the position, I don't
10 want to over interpret it but Probation recommends a 15-month
11 sentence and uses the word "conduit" in its recommendation
12 section, which is completely accurate. Thaler was a conduit.
13 If that word or concept is meant to suggest replaceability or
14 just some sort of cog in a wheel that anything could have
15 filled, that's not the case. You can certainly be a minor
16 participant but irreplaceable. You can be critical and minor.
17 If there was someone that Lustyik trusted as much as Thaler, he
18 could have been replaced, but that's not the case.

19 THE COURT: Okay. I'm going to honor that. I
20 appreciate the government's, the stand-up nature of what
21 Mr. Allee is saying right now because he is unequivocally
22 standing by the agreement that he made and that's a good
23 quality to have if you're a prosecutor. But number three, I
24 will say that if this were a litigated question, I have a hunch
25 that the government would take a different position, just a

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1 hunch. I guess that's a poor thing to say.

2 Back in the preBooker days, with which I'm familiar,
3 one of the problems with the guidelines that was perceived by
4 me, but not just me but by lots of people, was that they were
5 so rigid that in order to facilitate plea discussions and
6 guilty pleas without which the system would collapse of its own
7 weight, the parties in good faith, not in bad faith, in good
8 faith, would agree to things in order to reach a result which
9 everybody knew was not really what the facts would support. An
10 example would be, I know this from personal experience, a fraud
11 case. It's a million dollar fraud case, but everybody wants to
12 plea, there's no bad faith here and the government says look,
13 we'll agree that the amount of the loss was \$250,000. But if
14 you don't plead guilty and you go to trial we're going to take
15 the position that it's a million dollars.

16 In a way that sort of makes no sense, right, because
17 it's either a million dollars or it's 250. Which is it? How
18 can you agree to it being 250 and if it's really a million.
19 Another example would be weight of drugs. The conspiracy
20 involves ten kilograms but if you take a plea, we'll agree it's
21 500 grams. Or another very common sort of bargaining chip was
22 role. So the government says we think your client was not a
23 minor participant as that term is defined but you take a plea
24 by next week we'll agree he's a minor participant.

25 One of the objectives of the guidelines was to insure

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1 truth in sentencing, in other words, that somebody should be
2 sentenced for what they did. Of course that's easier said than
3 done because human beings have difficulty with absolute truth.
4 They're pretty good at meeting burdens of proof and calling
5 witnesses and laying foundations for documents and
6 cross-examining witnesses and whatever the case may be, but
7 all-knowing and all-seeing is something that's beyond human
8 capability. So to say that we're just going to sentence people
9 for what they did sounds good, but it's hard to achieve just in
10 the practical everyday real world of the courtroom. And the
11 problem with what was going on then was that it seemed to
12 foster dishonesty which is the opposite of what the guidelines
13 were supposed to do. That parties were quite explicitly
14 agreeing to things which they knew were not true in good
15 faith -- that's the weird part about it, not in bad faith, but
16 in good faith -- in order to achieve a fair and just result.

17 To me this has the appearance of that, to be brutally
18 honest. Although we're no longer preBooker. To me it seems to
19 me this was a bargaining chip. All right, we'll take the plea
20 but at least give me a two-level minor role adjustment.

21 I'm not going to reject it, I'm not. But I have to
22 look at what I think I understand to be what actually happened,
23 and there's no question that what actually happened is that
24 Thaler was really an important player in this process because
25 he had these two pals, one at the mall and one at the FBI. And

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1 he, it's not entirely clear how this happened, but somehow he
2 learned that the mall friend was into this whole political
3 thing in a foreign country and suggested to him you know what,
4 I think I might be able to help you. Of course, it's going to
5 cost you, I'm not going to do it for free. But I've got this
6 other friend and he's a guy that might be able to help you but
7 not for free. There's a value that we're going to place on
8 this. And then he goes to the other friend and he says, to his
9 FBI agent friend and he says: Listen, there's a guy who I know
10 who is willing to pay us, plural, us, a whole bunch of money
11 for stuff that he thinks is important. I don't even know what
12 he's talking about, I never even heard of Bangladesh -- I'm
13 making that up, maybe he has -- but it's a country somewhere in
14 Asia and evidently this mall friend of mine would be willing to
15 pay and has the ability to pay large sums of money for
16 information that he could use in some way.

17 Minor role? How did you get to minor role on that? I
18 picked on Mr. Allee, now I'm going to pick on you.

19 MR. SER: Sure, your Honor.

20 THE COURT: That doesn't sound that minor to me. It
21 sounds kind of important.

22 MR. SER: Having come from a district in southern
23 California where we have cases where minor role is frequent,
24 things like drug couriers who were mules bringing drugs across
25 the border, mules driving drugs within the United States --

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1 THE COURT: Come on, this is not a mule case, please.

2 MR. SER: -- I'm very familiar with the role
3 adjustment laws in place. You have to be substantially less
4 culpable than the average participant. And the guidelines
5 discuss things to gauge that such as supervisory capacity,
6 ordering people, things of that nature. So while Mr. Thaler
7 was, as the Probation Office terms it, the conduit between the
8 two parties, that doesn't change the fact that they all had
9 different roles as Mr. Allee said. And I think you have to
10 gauge whether he is substantially less culpable relative not to
11 merely the fact that he's a conduit, I think that's one factor
12 the Court can consider, but it has to look also at how the
13 scheme operated, what roles did each of the individual players
14 have. And fortunately, we're not talking unindicted or
15 uncharged co-conspirators which is very often included in minor
16 role analysis but we have the other two individuals who were in
17 this case. We have Mr. Lustyik, he's the most culpable. He's
18 the person in the position --

19 THE COURT: You won that one. Doesn't answer the
20 question.

21 MR. SER: He's substantially less culpable than
22 Mr. Lustyik. He's also substantially less culpable than
23 Mr. Ahmed because Mr. Ahmed is the one who makes the request.
24 Originally, Mr. Thaler and Mr. Ahmed when they worked together
25 at Macy's at salesmen -- that's how they met.

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1 THE COURT: I know that.

2 MR. SER: As the Court's aware, Mr. Thaler was
3 involved in various business activities with Mr. Lustyik and
4 individuals from the Utah case. And originally he and
5 Mr. Ahmed were discussing the purchase of uniforms and I
6 believe shoes from Bangladeshi factories because Mr. Thaler in
7 this side work he was doing with the individuals from Utah and
8 Mr. Lustyik were trying to create contracts with various
9 governments about supplying things like uniforms and boots.
10 That's how originally he and Mr. Ahmed met and talked.

11 And Mr. Thaler had mentioned that he had a buddy who
12 was in the FBI and kind of gave context to all the players in
13 it. And Mr. Ahmed asks, wow, my family is involved in politics
14 in Bangladesh. Can he get me something? And that's how this
15 whole thing comes about. It isn't as if Mr. Thaler comes out
16 and says I have a buddy, can I sell you on some more stuff. He
17 was a salesman but he wasn't pitching this to start. He's a
18 conduit, not the initiator of this. Mr. Ahmed is the one who
19 solicited him.

20 THE COURT: Basically you're saying that his role in
21 this was serendipitous. It so happened that he was friendly
22 with this guy who happened to be from Bangladesh who he thought
23 might be helpful in some other legitimate business transaction,
24 and the guy from Bangladesh suggests an illegitimate business
25 transaction, and a light bulb went off in his head, maybe I'll

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1 bring this to my buddy Lustyik and see how this plays out.

2 MR. SER: That was it.

3 THE COURT: What was his share of the profits supposed
4 to be?

5 MR. SER: It was supposed to be an even split.

6 THE COURT: Even Steven. Is that consistent with
7 minor role?

8 MR. SER: Your Honor hit it on the head when we
9 started these discussions earlier. You have to put it in
10 context of what was actually gained from the individuals in the
11 case. Mr. Ahmed gained \$30,000, that's clear from the
12 Probation Report or the government submission.

13 THE COURT: I'm not sure what that has to do with this
14 case. Somebody gave him money which he put in his pocket.
15 Indict him for larceny. That's not what this case is about.

16 MR. SER: I think that's one of the factors. Monetary
17 gain, according to, and I cite Hutchinson and an Eleventh
18 Circuit case that really kind of spell out some of the analyses
19 that would apply in the minor role context. And we have to
20 look at what the other individuals made. There was a lot of
21 talk but in the end a thousand dollars got exchanged.

22 Mr. Thaler kept 500, 500 went to Mr. Lustyik. But if we read
23 through everything, the payments from Ahmed were going to
24 Lustyik through Thaler. I know the split was even but I think
25 that the spirit of the arrangement was that Ahmed was paying

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1 really Lustyik for the documents and Lustyik did agree to split
2 the money with Mr. Thaler. I don't think Mr. Ahmed is paying
3 Mr. Thaler necessarily. This is something Mr. Thaler and
4 Mr. Lustyik had discussed. Everything when it talks about
5 payment discusses it being paid through Mr. Thaler. While
6 Mr. Lustyik and Mr. Thaler split the thousand dollars evenly, I
7 think Mr. Allee alluded to this earlier, it's the value of what
8 Mr. Lustyik provided as well I think that could factor in.

9 Mr. Ahmed is double-dealing apparently. He's trying
10 to figure out what he can get without having to give up the
11 money that he's getting from his sources in Bangladesh that was
12 really intended to go to them to get the information. But
13 Ahmed decides to hold back and pocket it, hoping to get
14 something, and then maybe double gain in the end by getting the
15 documents and not having to part with the money he received.

16 So I think if you compare Mr. Thaler's gain personally
17 from this to Mr. Ahmed, there's a distinct difference.
18 Mr. Ahmed is also in a position where he's the one making the
19 demands. Mr. Thaler can't fulfill the demands. And then it
20 shifts back to Mr. Lustyik. He's the only one who can do this.
21 And the way the scheme progresses during the course of six
22 months, originally it's Mr. Thaler acting as the conduit, but
23 it gets to a point where they're discussing based on this
24 contract series of payments, they now want to meet with the
25 source, they want to meet with the big man as some of the texts

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1 relate.

2 Ahmed says everyone wants to met Lustyik. He's the
3 one doing this for him. So eventually what happens is there's
4 a meeting in January at Ahmed's house where Lustyik gives the
5 presentation as to what he can give them and Lustyik becomes
6 the salesman. And his position makes him the only one who is
7 able to do any of these things.

8 THE COURT: But Mr. Thaler at that point didn't say I
9 made the introduction, I'm out of here. Sort of like in a drug
10 case there's an informant working for the government, the
11 informant makes the introduction, and then he walks away and
12 from that point he introduces an undercover agent to the seller
13 or buyer, whatever the case may be, and then he walks away and
14 he's done, he's already been paid, i.e. 50 bucks for working
15 today, or we're going to help you out with your case. But he's
16 done with the case.

17 But in this case Mr. Thaler was not done. All these
18 text messages. Of course Lustyik was the person, the
19 absolutely essential person because he's the one who had access
20 to this information. But all the text messages between Lustyik
21 and Thaler talk about "we" and "our" and "our thing" and "this
22 is what we want" and "we can make a lot of money" and "our,"
23 "we," "we," "our." It's not Thaler saying to Lustyik, listen,
24 Bob, you have been my friend by whole life and I know you could
25 make a lot of money. It's corrupt and all but you know, make a

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1 lot of money, buy me dinner, buy me dinner or send me a hundred
2 bucks or something and you're on your own. That's not what
3 happened here.

4 Anyway, look, here's the bottom line. This is helpful
5 because it gives me a broader understanding of the facts and I
6 appreciate what both highly competent attorneys have done in
7 this regard and I am upholding the agreement with respect to
8 that two-level downward adjustment.

9 That gets us to the one that's in dispute. It's
10 interesting we spent all this time on something that's not even
11 in dispute. There is a dispute about the three-level upward
12 adjustment under 3A1.2(a)(1)(C). The government contends and
13 the Probation Department has agreed that this person identified
14 as Individual 1 was an official victim in that he was a member
15 of the immediate family of a government officer, Bangladeshi
16 government officer, and that the offense of conviction was
17 motivated by such status.

18 I'm told, to be fair to you Mr. Allee, that Individual
19 1 is here today. Were you planning to have him speak? He's
20 welcome to be here of course, it's a public courtroom, happy to
21 have him.

22 MR. ALLEE: Yes, your Honor.

23 THE COURT: What's your plan with respect to this
24 person?

25 MR. ALLEE: Individual 1 is in the courtroom in the

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1 gallery, your Honor. We ask that your Honor hear from
2 Individual 1. We understand he's willing and would like to be
3 heard from by your Honor under Section --

4 THE COURT: I'm going to hear from him. I'm not
5 absolutely certain that he is a victim but I'm going to hear
6 from him. But I'm going to rule on this first. I'll hear on
7 him after I rule on this. We're not going to have a hearing.
8 He's not going to be testifying under oath or anything like
9 that.

10 MR. ALLEE: Let me separate these things out. The
11 being heard from, that's not in connection with this
12 enhancement. That's just a lawyer's argument. I don't think
13 there are any disputed facts. We're not trying to prove
14 anything. That's a 3771(d), please, can we hear from the
15 victim.

16 THE COURT: And I will hear from him. You don't want
17 me to hear from him before I resolve this question.

18 MR. ALLEE: Yes, your Honor.

19 THE COURT: I just wanted to make sure that was what
20 you wanted because I didn't want to not hear from him and have
21 you tell me later on you should have heard from him first.

22 Here's what I'm going to do on this. I've read the
23 parties' respective positions. I've read the cases cited which
24 didn't take very long because there aren't very many cases
25 cited. I've read the Probation Report. I find that the

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1 official victim enhancement does not apply under the
2 circumstances of this case.

3 First of all, in my view it's illogical to apply this
4 enhancement in a bribery case. The victim in an official
5 corruption case like this is the public itself because the
6 bribery of a public official is intended to and in fact does
7 compromise the integrity of that official. There's no doubt
8 about it. The public, the United States if you will, even the
9 FBI, are victims in this case. The confidential information
10 that was disclosed in documentary form and otherwise, not just
11 documentary form, belonged to the FBI. It didn't belong to
12 Mr. Lustyik, it didn't belong to Mr. Ahmed, it didn't belong to
13 Mr. Thaler, it belonged to the FBI and by extension the people
14 of the United States. And that was what was disclosed in
15 return for the bribe.

16 So to me, the victim is the United States and the FBI,
17 but more generally the public, public meaning U.S. citizens,
18 not citizens of other countries. But I don't see how any
19 individual in this particular case for these particular
20 offenses -- in other words, the offenses of conviction are
21 aiding and abetting the bribery of a public official and
22 conspiracy to commit honest services fraud. Those are the
23 offenses of conviction. I don't see how any individual was the
24 victim of these offenses of conviction. And of course 3A1.2
25 only applies to victims who are individuals.

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1 The government's argument is that the son of the Prime
2 Minister of Bangladesh is the victim, we'll call him Individual
3 Number 1, because Ahmed wanted to obtain confidential
4 information with which to embarrass Individual 1 politically.
5 He wanted to embarrass or even expose as corrupt Individual
6 Number 1. And I'm not making a finding that he was corrupt but
7 that seemed to be what Ahmed was up to. And why would Ahmed do
8 this? Because Individual 1 and his mother, the Prime Minister,
9 belonged to the ruling power in Bangladesh while -- ruling
10 party I should say, the party in power if you will, while Ahmed
11 and his allies belonged to the party currently out of power,
12 the party that had been in power in the past but at the present
13 time was not in power.

14 There are, just on this issue of what he was trying to
15 do, there were a number of references in the indictment itself
16 to e-mails between and among Lustyik, Ahmed and Thaler about
17 corruption allegations regarding Individual Number 1. That
18 appears to be what he was getting at. Let me see if I can find
19 something that suggests corruption and that will embarrass
20 Individual 1 and his mother and it may embarrass his party and
21 it may help my party which is currently on the outs. The
22 desire to do that was what Ahmed wanted to do.

23 But it's not the gist of the bribery scheme. It's not
24 the gist of the offenses to which Mr. Thaler has pleaded
25 guilty. The gist of those offenses is the corruption of an FBI

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1 agent and depriving the United States citizens of the honest
2 services of an FBI agent, or the right to the honest services
3 of an FBI agent.

4 So those are the offenses of conviction here and
5 Thaler was not convicted of threatening to assault or kidnap or
6 even embarrass Individual 1 or threatening to harm him in some
7 other way. That's not what Thaler was convicted of. Thaler
8 was convicted of bribery and honest services fraud, which are
9 serious offenses to say the least, but he wasn't convicted of a
10 crime the object of which was to harm Individual 1. So in my
11 view and I so find, Individual 1 is not a victim of the
12 offenses of conviction and therefore 3A1.2 does not apply.

13 Now, having said that, Ahmed's goal, which was
14 effectively adopted by Thaler, because he knew exactly what
15 Ahmed goal was, Ahmed goal to embarrass Individual 1 by
16 releasing confidential information about his involvement in
17 arguably fraudulent or criminal activities, information that
18 was contained from the confidential files of the FBI, is
19 certainly relevant to sentencing. To say the least, it's a
20 serious matter to corrupt an FBI agent in order to obtain dirt
21 on a political opponent. But it is the corruption of the agent
22 not the use of the dirt that is the gist of these offenses.

23 I often make the mistake of trying to oversimplify
24 things, but to me this is a square peg in a round hole problem.
25 What happened here was serious in all respects. What happened

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here vis a vis Individual Number 1 was serious, no question about it. But was Individual 1 a victim of these offenses of conviction? In my view, no, he was not. It doesn't mean he was treated fairly or nicely or graciously or appropriately or kindly or any of these things. But is he a victim of these offenses of conviction? No.

Also, I'll just add that the information obtained was not owned by or created by Individual 1 and therefore it was not taken or obtained from Individual 1. If that were the case obviously you may have a better argument that he was a victim. But that's not what happened here. So he's not a victim in that sense. And also I am not at all persuaded that this official victim enhancement was intended to apply to a foreign official or official's family. The government has cited no controlling or even persuasive authority to support their argument on this point. There's nothing -- well, the two cases cited, one is the Kim case, a Southern District case, where the district court said without citation to any evidence or authority or legislative history or history of deliberations of a Sentencing Commission whatsoever, just said that the Sentencing Commission would have included U.N. employees in this official victim guideline had that fact scenario been presented to them. I don't see why that is. What's the basis for that? There's nothing in that opinion that supports that rather -- well, that supports that statement.

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1 Then there's also a case, the Lavario case from the
2 Fifth Circuit, the government in its brief says -- sorry, I
3 just want to find that. Here it is. Finding in *dicta*. First
4 of all, you don't find something in *dicta*. So that in and of
5 itself is a contradiction. By definition *dicta* is just *dicta*,
6 it's just words. An important point is that this was *dicta*,
7 that I guess in that case it involved an assault on a Mexican
8 border agent, something to that effect, it was an assault upon
9 a person reasonably recognized as a law enforcement officer
10 from a foreign country. And the court in that case made
11 reference to this but did not rule that 3A1.2 applied to such a
12 person. So it's *dicta* because there is no finding.

13 There's also nothing in 3A1.2 to suggest that it
14 applies to foreign officials. I haven't found any other cases
15 on this point. And in my view, contrary to what the district
16 court in the Kim case said, I'm quite certain, although I don't
17 have any evidence to back this up, but it's just a matter of
18 common sense that the Sentencing Commission did not have
19 foreign officials in mind when it drafted this guideline.
20 There's a whole bunch of statutes that make it a crime to
21 assault or harm or do other things to or threaten federal
22 officials. And clearly they had that in mind. There's no
23 question about that. And if they had in mind officials of
24 foreign countries I think they might have mentioned that and
25 they didn't mention it. It's never been mentioned. The

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1 guidelines have been round for 30 years. As I said, I don't
2 mean to suggest that I know for a fact that they didn't
3 consider it, but common sense tells me that they did not
4 contemplate including foreign officials in this guideline.

5 I need to say something else about the suggestion in
6 the government's brief that Ahmed in fact sought to kidnap and
7 physically harm Individual 1. First of all, as to Thaler, I
8 don't recall seeing any evidence indicating that Thaler was
9 aware of any such intention by Ahmed. As I read the
10 government's brief, the basis for that allegation is Ahmed's
11 post-arrest statement which was after all about 18 months after
12 this scheme came to an end or petered out is almost a better
13 way to put it, it almost kind of petered out, and it came in a
14 conversation with an agent in which he was discussing, he
15 meaning Ahmed, was discussing things that he had said to a
16 totally separate person, a new investigator that he had hired
17 after the Lustyik Thaler scheme petered out. This on page 7 of
18 Exhibit A to the government's brief which is what the
19 government is referring to. It says: Ahmed told Steve, that's
20 the private investigator -- now Steve has nothing to do with
21 this case. He came into this, into Ahmed's life after the
22 scheme that's at issue here had ended. In any event Ahmed told
23 Steve that he wanted his help in obtaining private security for
24 BNP, evidently that's the name of the political party on the
25 outs that Mr. Ahmed belonged to, BNP party officials in

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1 Bangladesh. Ahmed also told Steve he wanted his help regarding
2 a plan by Ahmed to scare and hurt, it's redacted in my copy but
3 I'm sure it's referring to Individual Number 1. And Ahmed
4 initially told OIG, Official of Inspector General,
5 investigators that he was just kidding about such a plan.

6 However, when questioned further Ahmed acknowledged
7 that his intent was genuine and he asked Steve for help in this
8 plan to hurt and kidnap but not kill Individual Number 1.
9 Ahmed said Steve told him that was possible but the two did not
10 discuss it further. As far as I know that's it, at least
11 that's all that's been presented to me.

12 MR. ALLEE: Your Honor, let me add something apropos
13 of what you just said. What you just said is correct in that
14 the admission was about something that happened after the fact
15 of the scheme.

16 THE COURT: The scheme involving Thaler. It might
17 have been a different scheme but not this scheme.

18 MR. ALLEE: We're not arguing that Thaler would have
19 known of that effort or those discussions. On page 6 of our
20 brief we quote some text messages which were quoting other
21 documents in the case which your Honor may recall. These are
22 messages when Lustik and Thaler perceive or learn from Ahmed
23 that Ahmed is considering going with another leak, and they
24 are, they're not happy about that. And Lustik writes at the
25 bottom of page 6, the fourth quoted text that begins "I want to

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1 kill C," as you continue --

2 THE COURT: C is Ahmed, not Individual 1. Lustyik --
3 he says I want to kill Ahmed. But of course he didn't really
4 want to kill Ahmed. But keep going.

5 MR. ALLEE: Let me spin that text out. Lustyik is
6 angered by this and now is contemplating revenge against Ahmed
7 and then says I will put a wire on and get, and we bracket it
8 to make it clear, Ahmed and his associates, I will put a wire
9 on them to admit they want a Bangladeshi figure offed. And we
10 feel it's Individual 1. Maybe that's not conclusive but it's a
11 demonstration that there had been discussion about Ahmed's more
12 nefarious intentions between these three co-conspirators.

13 THE COURT: If I put even the slightest faith in
14 anything that Lustyik said during the course of this whole
15 episode, maybe it might represent that. But I don't. I don't
16 believe a word he says about anything, not just him, everybody
17 else in the scheme as well. And to me that's just an angry man
18 saying stupid things, and we know that he's a stupid
19 man as well, because he ruined his life by engaging in this
20 behavior. So if Ahmed had said that it would be different.
21 But Lustyik saying that without linking it directly to Ahmed is
22 just too thin. It's not close enough. It just isn't for me to
23 rely on it.

24 Moreover, Ahmed himself made conflicting statements
25 about what he intended. This is when he was talking about his

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1 conversations with Steve 18 months later, he made conflicting
2 statements according to the memorandum of interview about what
3 he really intended with respect to Individual 1. And Ahmed as
4 well is someone who -- these guys are all full of it. They're
5 so full of baloney. There's another word I could use but I
6 won't. But I just don't put stock in that.

7 Plus, all of the text messages and other evidence that
8 I've been shown is really about furthering Ahmed's political
9 aims. Maybe the scheme changed later on, but as far as the
10 scheme that Thaler was convicted of, it's all about politics
11 and embarrassment and exposing alleged corruption and it's in
12 that nature. There's no talk in those exchanges with one
13 exception that Mr. Allee had alluded to where Lustyik, an angry
14 Lustyik, who has not seen the big payday he was hoping to see,
15 is making these "big man" statements. Well, I'll show him,
16 basically, and of course he never actually does that. That's
17 it. That's all you've got. There's no talk in the exchanges
18 between Ahmed and Thaler or Ahmed and Lustyik about doing
19 physical harm to Individual 1. So as far as I'm concerned,
20 that supposed objective is not part of the offenses of
21 conviction.

22 And as I said earlier, the context in which Ahmed made
23 these statements is not the context of this case. So again,
24 it's just at least one step removed from this case. And it
25 does not appear to be part of this case. At most it's a part

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1 of some other case or some other conspiracy that Ahmed was
2 involved in maybe. Maybe. I use that word advisedly. But it
3 wasn't part of this case because it was related to Steve.

4 Finally -- and fortunately -- it's clear that
5 Individual 1 was not in fact physically harmed. And there's no
6 evidence that there was ever an attempt to physically harm him.
7 In the statements that he made to the probation officer he said
8 that the release of confidential information could have led to
9 harm but obviously it didn't. Could have means could have.
10 And as I said, there's simply nothing in the victim impact
11 statement that suggests he ever was harmed even reputationally
12 or politically. He doesn't even say that. It doesn't say
13 well, I lost my job as the advisor to the Prime Minister, and
14 I'm guessing he didn't lose his job, because the Prime Minister
15 is his mother and that's probably a pretty good connection to
16 have if you want to have a job in that country.

17 So it's just too attenuated. There's no evidence of
18 actual harm, physical or otherwise. I don't think it's an
19 official victim. And I don't think the official victim
20 enhancement applies. That's my ruling.

21 Based on the parties' agreement as set forth in their
22 plea agreement as well as my review of the presentence report
23 and my own evaluation of the guidelines, I therefore find and
24 conclude that the final offense level is 23 at Criminal History
25 Category I which yields a sentencing range of 46 to 57 months

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1 in prison. There's been no motion for any departure,
2 guidelines-based departure from the applicable range.

3 Does the government wish to be heard on sentencing?

4 MR. ALLEE: Yes, your Honor. And we also, as I noted,
5 we are aware that Individual 1 has asked to be heard. Would
6 you prefer to hear that now or at a later point?

7 THE COURT: I would prefer you to go first.

8 MR. ALLEE: We understand your Honor's rulings. Our
9 position remains the guidelines should be 63 to 78 months.

10 THE COURT: I understand. Your objection to my ruling
11 is clear on the record.

12 MR. ALLEE: Our position is that the sentence should
13 be within the range we've advocated. The aims of sentencing,
14 many of the aims of sentencing are implicated directly here.
15 The sentence must reflect the very serious nature of the
16 offense. We've talked about that this is not your ordinary
17 bribery scheme. This is involving the bribery of an FBI
18 special agent of 24 years who was in counter intelligence. The
19 defendant here, Mr. Thaler, was a -- while we have talked about
20 both a minor and a critical participant in that scheme, he
21 arranged for the bribery scheme to begin and then arranged for
22 the participants in it to come together both by way of texts
23 and e-mails and eventually in person. While only a thousand
24 dollars changed hands, that owes as much to the incompetence of
25 the conspirators as their criminal ambitions. This was an

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1 ambitious scheme that had it been more competently executed
2 would have yielded hundreds or tens or potentially hundreds of
3 thousands of dollars to the participants, and did yield
4 information coming out of the FBI's secret databases right here
5 at the White Plains resident agency, who were acting
6 unknowingly at the behest of Lustyik, and Lustyik sending that
7 information through Thaler to Ahmed and then Ahmed onto others.

8 One thing, just because it's come up a couple of times
9 and came up in bail arguments, that I want to briefly address
10 is it may be tempting to dismiss portions of this scheme as
11 sort of cartoonish or fantastical or seemingly inevitably meant
12 to fail because there were certain things, there was that ID
13 that Ahmed had that had the wrong address, there's the fact
14 that only a thousand dollars changed hands, there's been
15 mention that some of the participants were shoe salesmen at a
16 Macy's. Those facts are all true but that of course shouldn't
17 undermine any of the seriousness of this.

18 This is an incredibly rare and serious situation.
19 This was an FBI agent. The participants, Thaler, here the
20 defendant to be sentenced, succeeded in the scheme, in getting
21 the agent to overcome, not overcome, to be swayed to break that
22 oath which is not cartoonish at all. This is a horrible and
23 serious success of an ambitious crime. This may have been a
24 conspiracy of fools but it doesn't make it less of a serious
25 crime.

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1 Not only is it serious in and of itself, this is an
2 affront to the justice system itself. We have of course lots
3 of cases with FBI agents, other federal agents. The notion
4 that this defendant assisted in bribing one and fulfilling a
5 bribery scheme to corrupt that agent offends the entire justice
6 system, it undermines the whole system itself, it creates in
7 the public eye the notion that other cases having nothing to do
8 with Lustyik, lack the integrity that they should have, that
9 the statements of FBI agents could be false or could be the
10 result of corruption rather than those agents fulfilling their
11 oaths.

12 THE COURT: That agents can be bought. If you have
13 the right amount of money, somebody can be bought. That's the
14 suggestion that's created here and that is affront to the
15 justice system which is why the people of the United States are
16 the victims of these crimes.

17 MR. ALLEE: I certainly don't want to reargue it, but
18 we said that Individual 1 was a victim, not *the* victim. We
19 believe there are lots of victims. All of the people in the
20 United States who rely on the integrity of the FBI agents are
21 victims here. The entire system depends not only on the
22 integrity of those agents and of people not to assist them in
23 being corrupt, but the perception that it can't happen, if it
24 does happen it will meet a very serious consequence, there will
25 be a very serious accountability for that, to maintain that

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1 integrity, and then by consequence the justice system itself
2 that we're all a part of.

3 The history and characteristics of the defendant which
4 Mr. Ser does well to highlight in the sentencing submission for
5 the defense of course includes that he's not been, this is his
6 first conviction, this is his first sentencing. We don't
7 dispute some of that. But there are a couple of things to say.
8 This is not his only offense. He's awaiting sentencing in
9 Utah. It's not something he's been sentenced for here in any
10 way. We're not asking for that, at least. It is certainly not
11 the case that the defendant has made one aberrational or
12 isolated misjudgment. This is part of a long-running series of
13 acts that reflected a criminal mindset, a thorough, complete,
14 criminal mindset and a willingness to do the things I just
15 described, to participant in conduct that is an affront to our
16 system itself, and to net a lot of money through bribery.

17 The suggestion that it was born out of financial
18 hardship may be true. That of course is not an excuse. There
19 are a lots of hardships that people who turn to crime endure
20 and these are not that, they're not that far out of the
21 ordinary. Mr. Thaler, of course, was laid off and had some
22 other hardships in his life. But they do almost nothing to
23 explain this conduct. It's such a disproportion between his
24 personal circumstances and the crime engaged in here.

25 Lastly, your Honor, on the issue of consecutive,

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1 concurrent, we of course did initially ask your Honor to order
2 that the sentence be consecutive to the anticipated sentence in
3 Utah, and we then withdrew that request. We maintain that the
4 sentences here absolutely should be consecutive and if they are
5 not it will essentially be a free pass on one or the other.
6 These are separate crimes. They resulted in separate results.

7 THE COURT: I'm not going to order it to run
8 concurrent or consecutive. There's nothing to run it
9 consecutive or concurrent to. I'm not doing that. The judge
10 in the other case will decide what's an appropriate sentence in
11 that case, and obviously she'll know what my sentence is, and
12 then she'll decide what she's going to do. I'm not weighing in
13 on that debate one way or the other. I'm going to sentence
14 Mr. Thaler for what he did here, period.

15 MR. ALLEE: Our position is that that sentence should
16 be a sentence within the guidelines range. That sentence would
17 promote respect for the law, it would deter others from this
18 kind of just fantastical and extravagant and really disruptive
19 kind of scheming, and would reflect the offense itself, the
20 seriousness of it. Thank you.

21 THE COURT: You advised me that Individual Number 1
22 wanted to be heard, and as I said, I don't believe that he's a
23 victim in terms of the official victim enhancement of the
24 guidelines. But I'm not prepared to conclude that he's not a
25 victim for purposes of whether he should be permitted to speak

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1 at this proceeding.

2 Mr. Ser, before I do that, do you have any comment
3 about that?

4 MR. SER: I wasn't given any notice, your Honor, but I
5 won't object.

6 THE COURT: He's welcome to do that. If he would
7 prefer not to give his name, all the parties will know who he
8 is obviously, if he would prefer not to give his name, that's
9 entirely up to him.

10 MR. ALLEE: Thank you, your Honor.

11 MR. WAZED: Thank you a very much, your Honor. My
12 name is Sajeeb Wazed. I am, as you know, the son of the Prime
13 Minister of Bangladesh. However, just to inform you as well, I
14 am a U.S. resident. I live here in Washington, D.C. in the
15 suburbs. My wife is American. My position with the government
16 of Bangladesh is honorary and part-time. I do not take payment
17 from the taxpayers of Bangladesh. However, in Bangladesh I am
18 regarded as my mother's successor. I have gotten involved in
19 politics over the years helping her. And I am credited with
20 running our party's election campaign in this last election.

21 THE COURT: You're not going to do things in
22 Bangladesh like we do them here where we have Bush, Clinton,
23 Bush, Clinton.

24 MR. WAZED: Unfortunately, that has already happened
25 in Bangladesh, sort of like a brand. My grandfather led our

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1 independence movement. His name was Sheikh Mujibur Rahman.
2 And he founded the country and was given the title of Father of
3 the Nation. So that legacy lives on. I don't expect it to
4 last forever; I hope it doesn't. Frankly, I have not gotten
5 involved in politics because I want to. I've gotten involved
6 because of circumstances like this.

7 Several years ago in 2004 there was assassination
8 attempt on my mother. 23 people were killed, 400 injured.
9 Currently, senior government officials of the current
10 opposition are behind bars having been convicted of that
11 attack. The same terrorist group that actually carried out the
12 attack had planned an assassination attempt on me a year later
13 in Bangladesh. Luckily, my trip circumstances changed and they
14 were never able to actually carry out the attack. A couple of
15 years ago I was contacted by the FBI here in the U.S. that they
16 had picked up threats against me here in the U.S. from
17 individuals who were allied with our opposition.

18 Now, I'd like to point out here that our opposition
19 party -- our party in Bangladesh is the secular political
20 party. Our opposition is right wing and they have an official
21 coalition with the largest fundamentalist political party in
22 Bangladesh. And over the years they have used assassinations
23 and killings as a political tool continuously. Even in the
24 past two months, they have conducted arson attacks on innocent
25 civilians in the hope of overthrowing our government. These

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1 are terrorist attacks. Over a hundred people have been killed.

2 So what I would like to request to you is this. Not
3 that for me, but for my family, we have always lived under a
4 threat by our opposition. My grandfather was assassinated by
5 military officers with my entire family including my uncles,
6 their wives. My youngest uncle was ten years old. The chief
7 of army at the time was the founder of our opposition party who
8 became the first military dictator. This an is ongoing threat,
9 something we learned to live with, and this is one of the
10 reasons I live here in the U.S. because I now have a family. I
11 have a wife and an eight year old daughter. It's a lot safer
12 for them here than in Bangladesh. But it's incidents like this
13 where the FBI as well as our own intelligence services are
14 pickings up threats against me continuously because I am an
15 easier target here now than I am in Bangladesh. In Bangladesh
16 I'm under heavy security. Here not so much.

17 So beyond just the bribery scheme here, the threats,
18 whether it's from Mr. Ahmed or other individuals that he has
19 supplied information on me to which make it easier to locate me
20 because of this incident, I've had to move houses, I've had to
21 hide my address. So it is a real threat to me, to my life, and
22 I would like to request your Honor that you at least put a
23 deterrence out for anyone else who may be from our opposition
24 living in the U.S. who may make such attempts.

25 THE COURT: Thank you, Mr. Wazed. I hear you and I

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1 appreciate everything you just said. Thank you for speaking.

2 Mr. Ser, do you wish to be heard?

3 MR. SER: Just briefly, your Honor.

4 THE COURT: You can say whatever you want but as
5 usual, you did a great job with your sentencing submission.

6 You always do that. But let me tell you up front I'm most
7 interested in what he did, what your client did. I'm less
8 interested in what a great guy he is and what a wonderful
9 family he has. I'm assuming that these are his family members
10 here. It's great that they are here. It's especially grate
11 for your client that he's here because he needs their support.

12 But what Congress said in 3553 is the court needs to
13 consider first the nature and circumstances of the offense.
14 They didn't put that first accidentally. They put it first
15 because it's by far the most important thing. You've submitted
16 a lot of information about your client's life and his family
17 life and his family and his children and his parents and his
18 upbringing. That's all relevant, I'm not saying it's not
19 relevant. It's just a lot less relevant than what he actually
20 did. So that's what I'd like you to focus on.

21 MR. SER: I will cut to the chase then, your Honor.
22 At page 7 and 8 of my sentencing submission I go into great
23 detail about the nature and circumstances of the offense and I
24 explain Mr. Thaler's involvement. We've talked about it a
25 great deal already today. He started out as a conduit between

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1 Mr. Ahmed and Mr. Lustyik, introduced them. And then he became
2 a courier of sorts relaying messages between the two and
3 attempting to provide Ahmed with the documents Lustyik was
4 capable of obtaining by virtue of his position with the FBI,
5 hoping to get money from Ahmed that he would then share with
6 Lustyik. That issue is what the conduct is; no more, no less
7 at this point.

8 And in the end what it comes down to, and your Honor
9 said it earlier, a thousand dollars got exchanged. There were
10 a lot of talks, a lot of discussions. And I think that's a
11 crucial fact in this case. Because when we look at the
12 guidelines, it's a starting point. We have to decide are those
13 guidelines too high, too low or just right pursuant to 3553(a)
14 and various factors. If we look at the nature and
15 circumstances of the offense and we compare it to the
16 guidelines, it really begs the question, and I mean I think
17 supports not only my request but Probation's recommendation
18 here.

19 The offense conduct involved Mr. Lustyik who is an FBI
20 agent. Arguably that was taken into account by the base
21 offense level because there's an extra four points added under
22 the guideline calculation because of the involvement of a high
23 level official, namely the FBI agent Mr. Lustyik. If we look
24 at the conduct, I think the guidelines double count that to an
25 extent.

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1 THE COURT: They double count what? I know there's a
2 four-level adjustment. But what's the double counting?

3 MR. SER: When Mr. Thaler pled guilty to the bribery
4 and the honest services fraud, it involved Mr. Lustyik. He's
5 the public official who is involved. Nevertheless, that may be
6 taken into account by the base offense level, there's an
7 additional four-level enhancement that the guidelines call for,
8 because the offense conduct involves a high level government
9 official.

10 THE COURT: That's not double counting, that's just
11 what the guidelines call for.

12 MR. SER: Right, but I think the conduct is already
13 taken into account by the base offense level by virtue of the
14 nature and circumstances of the offense. The bribery involved
15 Mr. Lustyik. The honest services fraud deprived the public of
16 Mr. Lustyik's services.

17 THE COURT: But Mr. Ser, I hear you, but the bribery
18 guideline applies to lots of different things.

19 MR. SER: I understand that.

20 THE COURT: In a commercial context, it could be
21 bribery that would be punishable in federal court. What the
22 Commission said -- on this one there's no question what the
23 Commission meant -- they said there's bribery and there's
24 bribery and it's all bad and if you're convicted it's bad, but
25 if you're convicted of bribing a high-ranking public official,

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1 it's really, really, really bad. So he should be punished
2 accordingly. And that's what he's convicted of.

3 MR. SER: With regard to the intended loss, and I
4 think here that really is the rub, the question is because a
5 thousand dollars got exchanged that the intended loss was
6 higher, and we've agreed to that in the guidelines. Should the
7 intended loss drive the sentencing here, if as everyone seems
8 to suggest this was a conspiracy of fools so to speak. There
9 was a lot of talk and your Honor was correct. Though there
10 seemed to be an agreement in place, eventually what happens is
11 Mr. Ahmed backs out and nothing else ever occurs after that one
12 exchange of documents as far as any additional exchanges go.
13 Nevertheless, the intended loss here is what really is driving
14 the intended guidelines, contemplating a loss far in excess of
15 a thousand dollars based on what your Honor observes is maybe a
16 shaky contract or agreement at best.

17 So we know about the bracket inflation as far as the
18 loss guidelines go. There are cases, I've cited one, talk
19 about how intended loss is a poor measure perhaps of
20 culpability in a case like this. So if you're going to get
21 down to the nature and circumstances, this comes down to a
22 thousand dollars, 500 of which Mr. Thaler got to keep.

23 As far as the nature of the documents go, yes,
24 confidential, sensitive. But I think to put it into context we
25 need to compare it to what could have been disclosed. And the

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1 headlines lines today and yesterday, perhaps good timing, poor
2 timing, I don't know, but General Petraeus entered a guilty
3 plea to a misdemeanor where he'll receive a recommendation from
4 the government of two years probation.

5 If we want to talk about deterrence, yes, an
6 individual sentence here is important to deter because this is
7 horrible conduct. But this isn't a highly publicized case like
8 General Petraeus, where the government comes out and says it's
9 okay to disclose eight black books of highly confidential
10 information which by the way included the names of operatives
11 for the CIA, I understand, far different than what we're
12 dealing with here, still serious nonetheless but different.

13 And so when I sat at home last night trying to figure
14 out how do I reconcile two years probation for -- and unlike
15 Mr. Thaler, someone who was a general long-term in the Army and
16 now or then headed the CIA, certainly well aware of his
17 obligations, how can I square what the government's
18 recommending with what the government decided to do in that
19 case and how does it affect the deterrence argument here.

20 I'm not putting out a question that a sentence in this
21 case shouldn't factor in deterrence. But it's hard to
22 understand how a lengthy sentence as opposed to the 15-month
23 sentence, given the person, I won't go into his background and
24 characteristics, your Honor is well aware of those, having seen
25 that news story, and even this morning again on the television,

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I tried to figure out, will a sentence that the government wants really deter anything when the public sees what someone like General Petraeus does and gets away with. I don't know. But I don't think a lengthy sentence as the government is urging here is commensurate to the nature and circumstances of the disclosures that were made. Sensitive, confidential, yes, and obviously difficult for Mr. Joy, but certainly it doesn't rise to the level that we're seeing in either cases.

THE COURT: Let me stop you right there. Believe me, I'm not here to comment on that other case. I see the connection you're trying to draw. But there's a big difference in that, as far as I know anyway from what I read in the newspaper, what do I know, that's all I have, there was no venality in that case. In this case venality is exactly the right word. A desire to enrich yourself by engaging in corruption. That's the big difference. Although I agree, that case also involved serious disclosures of information. If you're going to draw a conclusion that's favorable to your client from another case, you need to acknowledge that that case is different from this case because of the lack of venality. This case is nothing but venal. He didn't make much off of it, but not for lack of trying.

MR. SER: The relationship he had with his girlfriend -- I won't get into the details.

THE COURT: That's not venal. Venal is money. That's

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1 what we're talking about.

2 MR. SER: The question is did she benefit from it.

3 But the point is this, if we're looking to deter individuals,
4 and the government's argument here is you need to deter other
5 people from ever thinking they could bribe people to obtain
6 documents, the stories like General Petraeus certainly
7 undermine the effect of deterrence in a case like this. I
8 don't think a lengthy sentence is necessary to deter.

9 Certainly it's not necessary to deter Mr. Thaler. But I do
10 think the 15 months recommendation by Probation and our request
11 for 15 months is commensurate with the nature and circumstances
12 of the offense, given the nature of the disclosures that were
13 made.

14 As far as the venality goes, we have to consider that
15 any sentence here is going to be the first time for Mr. Thaler
16 in prison. First time. It's not going to be easy. We're not
17 asking for probation, we're not asking for time served. And he
18 still has to face the music in Utah on a different matter. But
19 it is worth noting that these overlap, and according to
20 Probation they were overlapping in time and conduct. And we
21 know from the suppression hearings we had, that they were very
22 interrelated because it was the subpoenas in that case that
23 kind of spawned this case. And gave rise to the exact same
24 charge. Different facts but similar charges.

25 So if you look at the money that was actually obtained

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1 and the benefit had in conjunction with the nature of the
2 disclosures, does it merit the lengthy sentence the government
3 is urging? Our position is it does not. We think Probation
4 gets it right in that regard.

5 The question also is, because Mr. Lustyik is the one
6 at the FBI who has the connection and ability to get these
7 records, does Mr. Thaler's disclosure have to be viewed in
8 conjunction or relative to that. Certainly the sentences will
9 be different to take that into account. But in the disclosure
10 of the records we have here, Mr. Thaler wasn't immediately and
11 directly involved with, as Mr. Lustyik has done, ordering
12 subordinate agents at the field office in White Plains to
13 provide someone unknowingly with these records or to utilize
14 the databases to obtain them.

15 So if we look at and contextualize Mr. Thaler's
16 conduct, it's very different, and he should be treated
17 differently, and I know will be treated differently, from
18 Mr. Lustyik. But I still speaks to the severity of the offense
19 conduct committed by Mr. Thaler. Yes, it was a conspiracy; yes
20 Mr. Lustyik did that; and yes, they were given to Mr. Thaler.
21 But he wasn't the one necessarily or at all violating an oath.
22 He certainly did no good by encouraging and assisting
23 Mr. Lustyik in doing so, but I think he's differently situated
24 in that regard. In the end this all petered out and nothing
25 additional occurred. We have a span of six months, a single

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1 disclosure and a thousand dollars. If you take a look at that
2 conduct, I do think the 15-month term here would be
3 appropriate.

4 I want to point out just two other small details. As
5 far as his family circumstances, the family is now having
6 discussions with doctors about the length of time his father
7 might have left. So his father's condition has certainly
8 worsened to the point where the doctors have concerns about
9 longevity. And the effect that this case has had on his family
10 is such a big punishment to him. Every time we talk it brings
11 Mr. Thaler to tears. I know he understands he's going to
12 prison. He acknowledges that. But he's facing a much greater
13 punishment as far as the impact this has had on his family and
14 will have going forward.

15 I would submit under the remainder of my paperwork in
16 the case that identifies the meeting conduct at Ahmed's house,
17 I don't need to rehash that, it's all spelled out in greater
18 detail than I think I've been able to do in other cases before
19 your Honor. Thank you, your Honor.

20 THE COURT: All the lawyers in this case have done an
21 excellent job in case I forgot to say this.

22 Mr. Thaler, this is your opportunity to say anything
23 that you'd like or present any information that you'd like to
24 present before I impose sentence. You're not required to do
25 so. I'm going to give you that opportunity at this time.

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1 THE DEFENDANT: I'd like to say that I'm deeply sorry
2 for this whole situation that's happened here and how it's
3 affected my family and everyone I know in my life as it is. I
4 can only guarantee that nothing like this will ever happen
5 again in my lifetime. That's it.

6 THE COURT: Have a seat.

7 Let me say first that in deciding the appropriate
8 sentence in this case, I've considered all of the statutory
9 factors set forth in Section 3553(a) of Title 18 of the United
10 States Code. Here's what happened in this case so far as I can
11 tell. Mr. Thaler, who had one friend, Lustyik, who was a
12 senior counter intelligence agent for the FBI, made another
13 friend, Ahmed, while they both worked at the Danbury Fair Mall.
14 Somehow Thaler hears that his mall friend, Ahmed, wants to
15 obtain confidential information from the FBI or from somewhere
16 to use for political purposes to embarrass the son of the Prime
17 Minister of Bangladesh, both of whom, meaning the son and the
18 Prime Minister, are prominent members of the current ruling
19 party in Bangladesh. And he also learns, this is really
20 important, that Ahmed, or someone working with Ahmed, is
21 willing to pay really good money for such information.

22 So at that point, Mr. Thaler makes a rather fateful
23 decision. And the decision he made which was made deliberately
24 and evidently because he was undergoing financial difficulties
25 at the time was to bring this swell idea to the attention, and

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1 I say that obviously sarcastically, to bring this idea to the
2 attention of his FBI friend hoping that the both of them could
3 make a lot of money in the process.

4 And Lustyik, for reasons that I simply cannot
5 understand but nonetheless this is what he did, he agrees to
6 this idea. He could have put the whole thing to an end right
7 then and there and said listen, pal, are you crazy. I'm not
8 going to do that. Go tell the guy to pound sand. Could have
9 done that. He didn't. Instead he agreed to do what Ahmed
10 asked, namely to disclose information from the confidential
11 files of the FBI in exchange for cash.

12 As I said, Mr. Thaler says he was motivated by his own
13 financial distress, but honestly, Mr. Thaler, that is a
14 pathetic excuse. I'm not sure you were offering it as an
15 excuse, you're offering it to try to put in context what you
16 did. But you know what, it's pathetic. What you did was with
17 full knowledge of exactly what was happening. You
18 deliberately, voluntarily, willfully, intentionally entered
19 into a bribery scheme involving an FBI agent working in counter
20 intelligence. This is not paying a kickback to a purchasing
21 agent at Staples or something. This is not bribing the highway
22 superintendent in the town of New Fairfield. An FBI agent
23 working in counter intelligence. And you thought it was a good
24 idea to do this because you needed the money. Pathetic. And I
25 think you know that. I think you know that. I'm not trying to

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1 be mean to you. I'm just trying to tell you the truth.

2 What you wanted to do was get rich quick. By
3 monetizing your relationship with this fellow Lustyik,
4 apparently a friend of yours since Sleepy Hollow High School.
5 And what you wanted was a retainer of \$40,000, pretty good
6 money, presumably in cash, it's unlikely they would give you a
7 check and issue you a 1099, and then monthly payments of
8 \$30,000 which you would split 50-50, not 60-40 or ten for you
9 and 90 for him, but 50-50 with Lustyik.

10 And you had to know that what you were doing was not
11 just wrong but shockingly wrong, shocking. Mr. Allee is
12 absolutely right. This is shockingly bad conduct. It's an
13 affront to the justice system. And you had to know that. You
14 did know that. There's no question you knew that. It's not as
15 if you said to yourself well, it's just Bangladesh, nobody
16 cares about Bangladesh, so what. You knew that what you were
17 doing was terribly and shockingly wrong and you did it anyway,
18 for money.

19 In the end, you didn't get much money. You got money
20 for a couple of dinners. It's tragic, really, at so many
21 levels. You end up getting \$500 out of this scheme, in other
22 words, half of the thousand dollars that was paid by Ahmed.
23 But as I said earlier, that was not for lack of trying. It was
24 an effort, very serious effort made with your pal Lustyik. I'm
25 not sure I understand this really. I know that it was

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1 terrible, I know that it was wrong. I don't know, maybe
2 Mr. Lustyik made you feel important, made you feel like a big
3 shot. Because he was definitely a big shot, there's no
4 question about that. And maybe your association with him made
5 you feel like a big shot. I don't know. I really don't know.
6 I'd like to know, but I don't really know.

7 It doesn't really matter. To me what you did was just
8 terrible. And the fact that you only got a thousand dollars
9 out of it is relevant but it's less relevant than what you were
10 trying to do and what you did do which was to corrupt,
11 participate in the corruption of an FBI agent.

12 The reason the scheme didn't go anywhere is because of
13 this "show me the money" problem. You wanted Mr. Ahmed to show
14 you the money before you showed him the stuff you were going to
15 give him and he wanted you to show him the stuff before he
16 showed you the money and eventually that was the end of it and
17 you walked away from each other. It's relevant that you were
18 engaged in some kind of similar sort of behavior in connection
19 with this Utah case. But as I say, I'm not considering any
20 aspect of the Utah case in deciding -- let me just take back
21 what I just said. It's interesting that this arises in the
22 context of some kind of similar conduct in Utah, but I am not
23 considering anything that you did in Utah in connection with
24 the matter that you have been charged with there, convicted of
25 there, I'm not considering any aspect of that in the sentence

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1 here. I don't have to. This is bad, what you did here.

2 And the only reason the scheme didn't go anywhere is
3 because you didn't want to show him information without seeing
4 the money and he didn't want to show you the money without
5 seeing the information. But as I said, it wasn't for lack of
6 trying.

7 The venality of this conduct is really offensive. I'm
8 going to honor the contract between Mr. Thaler and the
9 government to treat Mr. Thaler as a minor participant. And
10 that has an effect on the guideline range of course. But the
11 fact is this scheme could not have happened without Mr. Thaler.
12 So you may qualify, he does qualify for the minor role
13 adjustment. But that doesn't change the fact that it couldn't
14 have happened without him.

15 I'm told that Mr. Thaler has extensive experience as a
16 commission-based salesman. That's rather ironic. Am I the
17 only person to see the irony of that? It's ironic because what
18 happened here is that Thaler sought to earn a commission by
19 brokering the sale of an FBI agent's integrity, in fact, his
20 soul. So you're a salesman, you got a buyer, you got a seller,
21 you're trying to put them together and to earn a fee for doing
22 it. It's ironic that that's what you chose to use your skills
23 as a commission-based salesman to do.

24 The question remains, having said all of that, what's
25 the appropriate sentence in this case which has to be

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1 sufficient but not greater than necessary to satisfy the
2 sentencing objectives of 3553(a). Here it's highly relevant on
3 that point that Mr. Thaler is far less culpable than
4 Mr. Lustyik because it was Lustyik not Thaler who used his
5 position to obtain the information to sell to Ahmed. It's also
6 true that the ten-level upward adjustment based on the value of
7 the contemplated but never paid payment results in a somewhat
8 skewed sentencing range of 46 to 57 months. As I said, the
9 parties agreed to this enhancement, I'm honoring that
10 agreement. But that doesn't mean that I can't also believe
11 that that agreed-upon figure overstates the true magnitude of
12 the scheme.

13 Again, don't misread what I'm saying here. It doesn't
14 mean that the scheme did not have a great magnitude. It did.
15 What are we doing here? Of course it was a terrible thing.
16 It's just that I feel that the enhancement based on the amount
17 of money involved to some extent overstates the magnitude of
18 the scheme. Lustyik and Thaler talked about and even demanded
19 tens of thousands of dollars from Ahmed. But the amount of the
20 benefit actually obtained was only a thousand dollars. If you
21 were to calculate the guidelines based on that amount, I'm not
22 doing that, but I'm just using that I suppose for dramatic
23 effect, if you were to calculate the guidelines based on that
24 amount, the final offense level would be 13 and the sentencing
25 range would be 12 to 18 months. With everything else being in

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1 play, the four-level enhancement for high level public
2 official, the two levels off for minor role, all the other
3 guidelines adjustments would still apply, and where you'd end
4 up in this terribly serious matter involving corruption of an
5 FBI agent is 12 to 18 months. That's what the guidelines would
6 provide.

7 And the fact that the actual amount paid was so far
8 less than the amount that drives the calculation of the range
9 is a mitigating factor it seems to me. There's just a dramatic
10 disconnect between the actual amount and the contemplated
11 amount. And there should be some, and I will consider that as
12 a mitigating factor. There's consideration in a fair and just
13 system of the fact that the actual deal that ultimately was
14 done here was a thousand dollars. So I believe that that's a
15 mitigating factor that warrants a downward variance from the
16 guideline range. Not to 12 to 18 months, but a downward
17 variance.

18 It's also relevant that this was a nonviolent offense
19 committed by a first time offender, that there's no evidence
20 that anyone was actually harmed physically or otherwise, and
21 that there's no evidence that national security was compromised
22 in any way. Those things are relevant although Mr. Thaler's
23 conduct created a huge risk of both harm to an individual or
24 individuals and to the national security. But I think it's a
25 mitigating factor that those harms did not come to pass.

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SENTENCE

1 So again, the question is what's sufficient but not
2 greater than necessary, considering all of these, the multitude
3 of relevant factors here. And I've concluded that a sentence
4 of 30 months imprisonment followed by two years supervised
5 release is sufficient but not greater than necessary,
6 considering the nature and circumstances of the offense, the
7 history and characteristics of the defendant and the need for
8 the sentence imposed to reflect the seriousness of the offense,
9 and I can't underscore enough how serious this was, the need
10 for the sentence to promote respect for the law, to provide
11 just punishment and afford adequate deterrence. The key word
12 of course is adequate deterrence. That's what Congress said.
13 They didn't say maximum deterrence. Because if they did then
14 we would just impose capital punishment on everybody that was
15 convicted of a crime. That would probably deter people.
16 That's not a fair and just system in our fair and just society.
17 We're imperfect but we try to be fair and just. It would not
18 be just in my view to impose a sentence greater than 30 months
19 for the purpose of insuring adequate deterrence.

20 I've said this before, deterrence, you can graph the
21 significance of deterrence on an X and Y graph and it just
22 seems to me, of course every case is different, but you need to
23 impose a jail sentence in a case like this to achieve
24 deterrence. So the curve is fairly step at the beginning but
25 at some point the extra deterrent value of a lengthier sentence

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SENTENCE

1 levels off, so the graph kind of levels off or the curve levels
2 off. And I think this is an example of that. I think 30
3 months is sufficient to afford adequate deterrence. But I
4 don't think that anything less than 30 months would be adequate
5 to reflect the blatantly corrupt nature of this crime. And
6 that's why I cannot accept the probation officer's
7 recommendation for a 15-month sentence. It's simply too
8 lenient to satisfy the objectives of 3553(a).

9 I will add the following. Even if I had imposed or
10 even I had found that the three-level official victim
11 enhancement applied I would still impose the same sentence
12 because I am taking that into consideration. I'm taking into
13 consideration the potential effect and the gross behavior, the
14 potential effect on Mr. Wazed and his family, and the gross and
15 just mean-spirited behavior of Mr. Ahmed and Mr. Thaler and
16 Mr. Lustyik as if they don't care. Because obviously they
17 didn't care. Couldn't care less about Mr. Wazed. It's really
18 shocking. And I am shocked by it.

19 And I appreciate that Mr. Wazed is here and I take
20 everything he says absolutely seriously. But in the end, I
21 would have imposed the same sentence even if the three-level
22 official victim enhancement applied because I think under all
23 the circumstances, including everything I've heard about
24 Mr. Wazed, that that's the appropriate sentence in this case.

25 Taking into account all the facts and circumstances,

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SENTENCE

1 including all the facts and circumstances relating to
2 Mr. Wazed, 30 months imprisonment is sufficient but not greater
3 than necessary to comply with the purposes of sentencing. And
4 as I said earlier, I want to make clear that I am not ordering
5 that this sentence run concurrently with or consecutively to
6 any other sentence anywhere else at any time. That's not what
7 this is about. I'm imposing this sentence for this crime. It
8 does not take into consideration any conduct defendant engaged
9 in in Utah, or in connection with the Utah case.

10 Does either counsel know of any legal reason why the
11 sentence should not be imposed as stated?

12 MR. ALLEE: No, your Honor.

13 THE COURT: Mr. Ser?

14 MR. SER: No, your Honor.

15 THE COURT: Mr. Thaler, please stand.

16 It is the judgment of the this Court that you be
17 committed to the custody of the United States Bureau of Prisons
18 for a total term of 30 months to be followed by two years of
19 supervised release. The standard conditions of supervised
20 release 1-13 shall apply. The following mandatory conditions
21 which are on page 28 of the PSR shall also apply as follows.
22 The defendant shall not commit another federal, state or local
23 crime. The defendant shall not illegally possess a controlled
24 substance. The defendant shall not possess a firearm or
25 destructive device. The defendant shall refrain from any

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1 unlawful use of a controlled substance. The defendant shall
2 refrain from any unlawful use of a controlled substance. The
3 defendant shall submit to one drug-testing within 15 days of
4 placement on probation or supervised release and at least two
5 unscheduled drug tests thereafter as directed by the probation
6 officer. And finally, the defendant shall cooperate in the
7 collection of DNA as directed by the probation officer.

8 In addition the following special conditions shall
9 apply. They're on page 29. The defendant is to report to the
10 nearest Probation Office within 72 hours of his release from
11 custody. And the defendant shall be supervised by list
12 district of residence. If that's Connecticut then of course
13 you'll be supervised by the District of Connecticut.

14 I'm not imposing a fine because the defendant does not
15 have the ability to pay a fine. Restitution is not applicable
16 here. I am imposing the mandatory special assessment of one
17 hundred dollars per count, so the total is two hundred dollars
18 which is due immediately.

19 The foregoing constitutes the sentence of the Court.

20 Mr. Thaler, you may have a seat. You have the right
21 to appeal your sentence subject to any limitations on that
22 right contained in your plea agreement with the government. If
23 you're unable to pay the costs of an appeal you may apply for
24 leave to appeal without payment of costs. A notice of appeal
25 must be filed within 14 days after the entry of judgment.

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1 Therefore, if you do wish to appeal you must advise your
2 attorney to prepare and file a notice of appeal immediately,
3 or, if you request, the clerk will immediately prepare and file
4 a notice of appeal on your behalf.

5 I believe there are open counts, Mr. Allee.

6 MR. ALLEE: Yes, your Honor. We ask that the Court
7 dismiss the open counts.

8 THE COURT: I made a note that it's Counts 1, 5 and 6.
9 Does that sound right to you? We'll check that. But the point
10 is all the open counts in the indictment will be dismissed.

11 MR. SER: No objection, your Honor.

12 THE COURT: Are there any recommendations to the
13 Bureau of Prisons, Mr. Ser, that you would like me to include
14 in the judgment?

15 MR. SER: Yes. Nearest to family in Connecticut if
16 possible.

17 THE COURT: He lives in New Fairfield.

18 MR. SER: Correct, your Honor.

19 THE COURT: The way I like to phrase it is as near as
20 possible to New Fairfield, Connecticut. I know there's a
21 federal prison right there but I don't think it takes male
22 prisoners. But in any event I'll say as near as possible to
23 New Fairfield, Connecticut. Anything else in the judgment that
24 you want me to recommend?

25 MR. SER: I don't think so, your Honor, other than a

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SENTENCE

1 self-surrender date.

2 THE COURT: On that point, Mr. Allee, what's the
3 government's position?

4 MR. ALLEE: We're not opposed to a self-surrender. We
5 ask that the time frame for that not be lengthy, your Honor.

6 THE COURT: Then I will permit the defendant to
7 self-surrender to an institution to be designated by the Bureau
8 of Prisons.

9 MR. ALLEE: I'm sorry to interrupt you. I'm reminded
10 that Mr. Thaler faces sentencing in another district and we
11 think that it's March 30.

12 THE COURT: Right. So that applies. I'm not
13 counteracting any order from any judge in Utah. Sometimes
14 there are delays or things may happen. I'm sentencing him for
15 what happened here and I'm going to order a surrender date for
16 what happened here. But if he goes to Utah and in Utah the
17 judge decides that he doesn't get a surrender date, then that's
18 what happens. If she does give a surrender date then his
19 surrender date is still April 20th on my case.

20 MR. ALLEE: Yes. We just don't want to create a
21 logistical difficulty if the date was near --

22 THE COURT: It's going to be after. You said it was
23 March 30th in Utah?

24 MR. ALLEE: Yes, your Honor.

25 THE COURT: We're supposed to do it roughly 45 days.

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1 April 20th is the date that I came up with, at two p.m. He's
2 to surrender at the institution to be designated by the Bureau
3 of Prisons on April 250, 2015 at two p.m. Bail will be
4 continued.

5 Mr. Thaler, what that means is that you're still
6 subject to all of the conditions upon which you were previously
7 released. If you violate any of those conditions you could be
8 arrested and remanded. I would urge you not to do that. I
9 don't think you will. Anyway, as far as my case is concerned,
10 your surrender date is April 20, 2015.

11 And I will just add, it's a terrible tragedy, it
12 really is. It's so bad for so many people, not just for you,
13 Mr. Thaler, but for the public, for Mr. Wazed and his family.
14 And I just don't get it. I don't know what could possibly make
15 you think that for a few thousand dollars, even for many
16 thousands of dollars, it was okay to do this or worth the risk
17 to do this. I don't get it. But I'm constantly surprised by
18 human behavior. So I'm just going to add this to the list of
19 surprises that I've had over the years. I do wish you the best
20 of luck. I wish your family the best of luck. I hope you
21 believe me when I tell you that. But this is the appropriate
22 sentence. We're adjourned.

23 THE COURTROOM DEPUTY: All rise.

24 This Court will be in recess.

25 (Record closed)